

The California Kaiser fraud – with the government...

- In an attempt to create a nexus in the EDNY when one does not exist...

The government explained to the Court that **Counts 2, 3 and 4** were only relevant to funds that “Kaiser believed” he was not repaid by Kenner as a result of a 2006-07 renovation project in California between Kenner and Kaiser.

- The underlying transaction was not deemed part of any charged offense.

John Kaiser was not an investor in any of the charged conspiratorial “objects” in the current case, thus, the government’s allegation that Kaiser was being paid “in furtherance” of some cover-up defies logic, since he is not a victim with any financial nexus to the instant case.

(Michiewicz at [Tr.1020](#)):

“The reason some of those wire transfers go to Mr. Kaiser and some of these are the substantive wire fraud counts two, three, four, the reason they go to Mr. Kaiser is because he has no money to complete a subsequent project. He's still owed money from this Hermosa Beach project and, again, Mr. Kenner is controlling the funds.”

This is all false.

- The bank records from Kaiser and Kenner [[Ex.Z41a](#) (back-up records) and [Ex.41b](#)] confirm that under any accounting method, *infra* – Kaiser was fully repaid by Kenner no later than May 2008 – over eight (8) months *prior to the loans he received from Tim Gaarn in February 2009 and later (independent pf Kenner)*...

Due to the fact that Kaiser was not owed any funds from Kenner by the time that Gaarn wired two (2) loans to Kaiser in 2009 and Kenner loaned Kaiser funds in 2009 – the entire fabrication (per Michiewicz’ own words to the court) are a fraud and the counts cannot be charged.

- Currently – pursuant to Kenner's Rule 29-33 reconsideration motion – or on direct appeal, these counts must be dismissed, resulting in absolutely no transactions occurring in the EDNY.
- Notwithstanding – John Kaiser is not a victim of anything; inapposite, owing Kenner millions of documented dollars that will have to be resolved during civil

litigation post-Kenner's release; similar to the Jowdy-admitted Hawai'i loans (*government-forfeiture-44* [Ex.G]).

(Michiewicz at *Tr.1036-1037*):

"That's fine, Your Honor. Two -- two suggestions. It's going to be Hermosa, and there's another property which is known generically as the Paradise Valley or PV [Arizona] house. I'm not going to even ask about the name of the house. He can testify generically that he was also involved in another property, it was in the context of that second property in Scottsdale because of the Hermosa Beach failure to pay, lack of repayment, however you want to phrase it. That's why he was asking for money from Mr. Kenner, and that's why the wire transfers that are reflected in Count 2 and 4 occur. I would ask the Court to consider that it's not these other real estate ventures that are subject of the fraud. Rather, by way of background, because they represent, in the government's view, the proceeds of one of the frauds."

The California project accounting...

Starting the California accounting -- Kaiser turned over document *Bates stamp HER-133* (*APP077*) to the FBI (in FOLDER *Ex.Z41a*). They are Kaiser's hand-written notes (tracking document) about money he received from his friends & family to participate in the California renovation project with Kenner.

- Please note that Kenner was the California partner who secured a \$4 million California home loan (for the \$5 million purchase) and provided approximately \$500,000 in capital to initiate and complete the project – in spite of Kaiser's 2014 Arizona deposition testimony that *"Kenner contributed nothing"*.

On HER-133 (*APP077*), Kaiser specifically *delineated his \$380,000 wire transfer* (on page 1 and page 2) to Ula Makika for his Hawai'i partners 2006 short-term loan repayment after the August 2006 Hawai'i joint venture closing. Kaiser's former NYPD partner, Vincent Tesoriero, confirmed this to the FBI in 2014 (a year after Kenner's EDNY arrest) (*3500-VT-1 at ¶4-11*). **The government misrepresented this as "Kenner's money" during trial** &/or for Kenner's benefit.

- Tesoriero told the FBI in 2014 *"Kenner's role in the Sag Harbor project would be to raise money to build the property"*. Since Tesoriero *only* knew Kaiser in 2006 (at that time), he could have *only* learned that information from Kaiser when he received a copy of the new LedBetter operating agreement (in spite of Kaiser's 2015 lies to the court about never seeing the LedBetter operating agreement –

Tr.1005, 1145-49). Tesoriero told the FBI in 2014 that he received the LedBetter operating agreement directly and only from Kaiser (*3500-VT-1 at ¶ 9*):

“Tesoriero was under the assumption from the start of the LedBetter deal, Berard and Kenner were coming into the deal.”

“Tesoriero received the LedBetter agreement from only Kaiser.”

Kaiser's hand-written total on HER-133 confirmed his belief that there was **\$1,689,855** involved; fully supported by his banking records (*in the government's possession*).

The transactions begin...

This transfer (unrelated to the California project):

TOTALING - \$380,000

...Was wired by Kaiser to Ula Makika (the Hawai'i partners' bank account) to repay the 11-day loan Kaiser requested months earlier to “mask” the anonymity of his NEW LEDBETTER buyer and source of funds from his partners that he was buying out (Manfredi and Milana).

- Please note that Kaiser had about \$700,000 of his friends & family repayment money in his personal checking account from the August 2006 Hawaii closing that took place only 2-months earlier (in evidence).

APP002 – confirmation of Kaiser \$380,000 OUTBOUND wire 11-01-2006 to the Hawai'i partners...

➤ *This is the exact amount Kaiser received from the escrow closing the day before (Bates stamp: BNK-MM-00158).*

- Please note that the next day 11-02-2006, Kaiser wired \$620,000 to the California bank account for the Hermosa Beach project – THUS – Kaiser was 100% aware of the different bank accounts & different banks for the Hawaii/Ledbetter loan versus the California Hermosa project account...

APP001 – Kaiser's \$380,000 re-payment for his Ledbetter loan to the Ula Makika account (*Bates stamp: BNK-MM-00000168*).

APP002 – Kaiser’s \$380,000 Ledbetter loan repayment and initial \$620,000 transfer to the California bank account for the renovation project (*Bates stamp*: BNK-MM-0000138-139).

APP003 – Kaiser’s \$620,000 transfer to the California house project three (3) days after the LedBetter repayment (*Bates stamp*: BNK-MM-0000052).

APP004 – Kaiser’s hand written notes regarding his \$380,000 LedBetter re-payment versus his California project contributions -- *Bates stamp*: HER 133-135 (\$380,000 Ledbetter loan repay).

- Please note that Kaiser specifically denotes the LedBetter repayment – with a minus sign – and different than all of the California renovation contributions...

APP005 – “Kaiser Ledbetter loan” notes taken from Kenner’s office by the FBI (*Bates stamp*: PKHOME-00010791) – verifying in real time Kenner’s *mens rea*.

- On *APP005* -- Please note that there is a post-it stuck to the page that clearly designates the \$380,000 paid back for the Ledbetter loan as “***Kaiser***”...

APP088 -- Ledbetter loan (to Kaiser) with Kenner’s notes about filing a lis pendens versus the LedBetter loan to Kaiser to protect the loan until the Kaiser re-payment completes.

- After the \$380,000 Hawai’i partners’ re-payment (100% unrelated to the California project) – Kaiser had **\$1,309,855** invested in the California project.

During the 2006-07 California construction, Kenner personally transferred “advances” to Kaiser’s personal bank accounts:

TOTALING - \$65,500

Kenner wired money to Kaiser’s **Wells Fargo Account #5333557139** from Kenner personal and company accounts...

6-27-07 from Kenner’s GDM33 LLC - **\$32,500**

7-27-07 from Kenner’s personal - **\$13,000**

9-25-07 from Kenner’s personal - **\$20,000**

- These transfers occurred at the same time that Kenner was paying for 100% of the California project carrying costs pre-sale...

APP007 -- \$32,500 transfer to Kaiser from Kenner – *Bates stamp*: BNK-WF-00001328...

APP008 -- \$13,000 wire to Kaiser from Kenner -- *Bates stamp*: BNK-WF-00000716...

APP009 -- \$20,000 transfer to Kaiser from Kenner -- *Bates stamp*: BNK-WF-00000726

- After the **\$65,500** payments to Kaiser there was **\$1,243,500** due to Kaiser.

After the sale of the California project in 2007...

Kenner and Kaiser were each due \$653,500 as their 50/50 share of the California profits (after capital contributions were re-paid):

✧ Net profit -- \$1,306,500 - 50-50 split – about **\$653,250** per partner... ¹

The 2015 Arizona judge [Ex.Z25 at ¶ 2] stated -- *“Kenner and Kaiser agreed that they would split the profits 50/50 from the sale of the property. Upon selling the property in 2007, both Kenner and Kaiser netted a profit of approximately 1.5 million dollars.”*

- ✧ Please note that Kenner claimed about \$750k profit on his Federal Income Taxes from the California project (Kenner's approximate half...and then some)...
- ✧ **Kaiser claimed ZERO income or profit** to the IRS -- in spite of receiving 100% of the profits paid-out within 4-6 months, *infra*.

The balance due to Kaiser at that point was approximately **\$1,896,750**

¹ \$8,500,000 - sale price
\$5,000,000 - purchase price

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\$3,500,000

- \$514,000 (approximate closing costs from HUD-1s) (*See APP066, APP067*)

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\$2,986,000 NET

- \$436,000 – approximate Kenner capital contributions (from Hermosa Ventures bank statements)
- \$1,243,500 – approximate Kaiser capital contributions (from Kaiser's HER-133 handwritten document)

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\$1,306,500 PROFIT (split 50-50)

DIVIDE by 2

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\$653,250 - approximate 50-50 split (excluding taxes)

These transfers (*APP011*):

TOTALING - \$665,000

...Were wired by Kenner to Kaiser (*or on Kaiser's behalf/request*) from Kenner's personal account...*after* the sale of the Hermosa Beach California home on 11-02-2007 – AND – *before* the May 2008 *purchase* of the follow-up Paradise Valley Arizona renovation home project:

- **Please note that Kaiser opened Wells Fargo bank account: 5333 55 7139**

11-2-07 from Kenner personal - **\$100,000 Wells Fargo**

11-5-07 from Kenner personal - **\$100,000 Wells Fargo**

11-5-07 from Kenner personal (to AMAZON TIMBER FRAMES for Kaiser) - **\$40,000**

11-9-07 from Kenner personal - **\$100,000 Wells Fargo**

11-21-07 from Kenner personal - **\$100,000**

12-04-07 from Kenner personal (to Dain Rauscher account per Kaiser) - **\$110,000**

1-07-08 from Kenner personal - **\$15,000**

1-14-08 from Kenner personal - **\$1,100**

1-15-08 from Kenner personal - **98,900**

APP011 -- \$665,000 in total transfers for Kaiser from Kenner post-CA closing – *Bates stamp*: BNK-WF-00000735-747...

The balance due to Kaiser at that point was approximately \$**1,231,750**

This transfer ([APP012](#)):

TOTALING - \$500,000

...Was wired 12-07-07 from Kenner personal account (to Robert Gaudet – ½ Kaiser & ½ Kenner) - \$1,000,000 for Gaudet's Los Frailes Mexico project...*Bates stamp:* BNK-Wells Fargo-000741.

- ❖ Please note that \$500,000 was returned to Kenner from Gaudet on 1/2/08 (Kenner's \$500,000) as part of a short-term loan & Kaiser's \$500,000 remained with Gaudet...

On the government forfeiture spreadsheet [government-forfeiture-1](#) – Kaiser has \$1,000,000 investment in Los Frailes.

Please note that after the \$1,000,000 wire to Gaudet from Kenner (\$500,000 for Kaiser and \$500,000 as a short-term loan from Kenner)...

...***IF*** Kenner did ***NOT*** receive the \$500,000 (of the \$1,000,000) 12-7-07 transfer back (on 1-2-08) from Gaudet as a short-term loan to the Los Frailes project – with Kenner already invested over \$350,000 personal cash in Los Frailes at the time) – Kaiser's additional \$500,000 from the October 21, 2008 & October 30, 2008 transfers to Kenner per the notarized document ([APP099](#)) in the government's possession would give Kaiser a \$1.5mm position in Frailes -- *which neither Kaiser nor the government claim.*

- Please note that although FBI Agent Galioto shared the evidence of the October 2008 Kaiser transfers (*with a signed and notarized agreement by Kaiser*) with AUSA Diane Beckman and IRS Agent Josh Wayne (***per Galioto's 2-6-2014 email – Bates stamp: DS-0000121***)...knowing of the Kaiser and Berard Arizona court fraud – Galioto continued to assist Berard and Kaiser in their Arizona case defense.
- At this point -- Galioto knew that Kaiser and Berard claimed in their Arizona declarations that Kaiser wired the \$500,000 to Kenner for additional Arizona investments in the renovation project.
 - It was obviously another Kaiser and Berard fraud on the U.S. court system to re-write their fraudulent history (like Jowdy) – this time with Galioto's help...

APP012 -- \$500,000 - Kaiser LOS FRAILES deposit

APP013 -- \$1mm wire to Gaudet (Frailes) with \$500,000 for Kaiser – Bates stamp: BNK-WF-00000741...

APP014 -- victim - Nick Privitello (at 1-23 – and Kaiser fraud signatures at 9 and 12)

APP015 - victim - Frank Sconzo & Willy Krueger (and Kaiser fraud at 15-17)

APP016 -- 3500-FS-1 (at ¶ 4, 6, 7)

APP017 -- Galioto & Kaiser email re-- \$500k Frailes investment – CRITICAL FBI knowledge

APP099 -- -Los Frailes-Kaiser 500k notarized Agmt.tiff

The balance due to Kaiser at that point was approximately \$**731,750**

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These transfers:

TOTALING - \$580,000

...Were in May 2008. Kenner arranged for the 8224 North Golf Drive, Paradise Valley AZ 85253 purchase ("PV") and closing...

The following payments were made towards the \$580,000 total down payment on the home...all from Kenner accounts...

- ✚ 3-31-2008 – Kenner's check to First American Title - \$25,000 from Kenner's Wells Fargo checking account...
- ✚ 5-2-2008 – Kenner's wire transfer to First American Title Insurance Company (with \$235,000 from Kenner's Wells Fargo account)...
- ✚ 5-5-2008 – Kenner's wire transfer to First American Title Insurance Company (with \$330,000 from Kenner Charles Schwab investment account)...

APP019 -- Kenner \$25,000 deposit for Paradise Valley home purchase – *Bates stamp*: BNK-WF-00000948...

APP020 -- Kenner check #1288 for \$25,000 Opens PV escrow -- *Bates stamp*: 15947...

APP021 -- Jowdy subpoena in AZ case to harass Kenner -- *Bates stamp*: 15857-16162...

- Please note that in the Arizona case – Kenner, Little Isle 4 & Ula Makika versus Jowdy for the \$5,000,000+ in unpaid loans from Hawai'i to Jowdy – Jowdy's attorneys during their request and ORDER for expedited discovery related to the authenticity of the "***Hawai'i Loan Agreement***" under the Jowdy defense in 2008 that there were NO LOANS.
- They ***disregarded*** the court's ORDER (based on heir-own request to halt discovery) and subpoenaed Kenner's Wells Fargo banking records simply to harass Kenner's banking relationship, which was closed by Wells Fargo shortly after the Jowdy subpoena and follow-up FBI subpoena.

- Ironically -- Kenner banked with Wells Fargo for approximate 18 years before this subpoena and subsequent closing order by the bank.

[APP022](#) -- Kenner \$330,000 deposit to escrow for the PV house – *Bates stamp*: 15955...

[APP023](#) – Kenner’s \$235,000 deposit to PV house escrow -- 2008-May-Schwab account statement for Kenner – *Bates stamp*: BNK-CS-10047-10052...

The balance due to Kaiser at that point was approximately \$**151,750**

- Please note that the Arizona project deposits & expenses totaled about \$1,500,000 thru completion in 2012 (all paid by Kenner transactions), when Kaiser & Berard *fraudulently quit claimed* the property away from Kenner’s beneficial interest on May 9th, 2012 [[Ex.Z25](#) at ¶ 57].

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These transfers:

TOTALING - \$140,000

...Were made by Kenner for the 8224 North Golf Drive, Paradise Valley AZ 85253 purchase ("PV")... from his Phil Kenner – personal accounts...

CHECKS: ~66 checks – All of these are payable to people, services or vendors in cv2012-055576. These checks total about **\$140,000**.

The Kaiser and Berard defense in the Arizona case is that Kenner had “***no interest in the deal***” (see *Kaiser and Berard 2014 depositions in the AZ case*), thus, according to Berard and Kaiser -- all of these expense payments belongs to them.

APP024 -- about \$140,000 - Phil Kenner – 8224 personal account checks

The balance due to Kaiser at that point was approximately \$**11,750**

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These transfers:

TOTALING - \$243,000

...Were made after the May 2008 closing when Kenner made \$580,000 in deposits.

The following bank transfers were made to Kaiser's benefit from Kenner's personal bank account.

APP025 -- \$243,000 - Kenner wires to Kaiser after Arizona purchase

APP026 -- Kenner post 2008 transfers to Kaiser (Kenner bank account)

Kaiser at that point was approximately \$231,750 OVER PAID...and *stealing* from Kenner...with the funds still due today in 2019!

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These transfers:

TOTALING - \$92,370

...Were made after the May 2008 closing that Kenner transferred \$580,000 in deposits. The following ***RANDOM*** bank checks (***not all inclusive***) were written to 3rd party vendors working on the Arizona renovation project – CLAIMED 100% ownership by Kaiser & Berard...but all originating from Kenner personal account...

APP027 -- \$92,370 - Kenner checks after Arizona purchase to renovation contractors

APP028 -- Kenner checks for the AZ renovation project

Kaiser at that point was approximately \$324,120 OVER PAID...and stealing from Kenner...with the funds still due today in 2019!

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The following expenses were paid directly by Kenner *prior* to the *fraudulent quitclaim* by Kaiser and Berard May 9th, 2012 (while they were employed by Jowdy at Diamante Cabo):

- Kenner American Express card – approximately **\$192,000**
- Kenner Citi credit card – approximately **\$31,000**
- Kenner Chase credit card – approximately **\$85,000**
- Kenner Bank of America transfers & cash (payroll) – approximately **\$534,000**

TOTAL - \$842,000

APP029 --- About 192,000 AMEX - 8224 expenses

APP030 -- Kenner AMEX records for AZ renovation house

APP031 -- About 85,000 Chase Bank credit card - 8224 expenses

- *APP031a – Chase credit card details...*

APP032 -- About 31,000 Citibank -- 8224 expenses

- *APP032a – Citibank credit card details...*

APP033 -- \$534,00 cash transfers to Kaiser during AZ renovation

Kaiser at that point was approximately **\$1,166,120 OVER PAID**...and *stealing* from Kenner...with the funds still due today in 2019!

Kaiser was fully repaid from the California project thru direct transfers & investments in Arizona project (all fully documented).

By end of 2008 – Kaiser begins to “**owe Kenner funds**” from over payments to Kaiser thru the Arizona renovation project expenses...

None of the Kaiser California repayment funds are involved in the:

- **Cabo House** purchase -- December 2007 – (portion of \$1.5mm) (*Tr.1087*) – or
- “**Grocery List**” of Kenner funds transferred to Constantine -- (approximately \$2,200,000) (*Tr.1404-05*)

- Kaiser claimed in his 2010 Arizona declaration versus Constantine and Eufora that he was transferred \$2,200,000 from Kenner for the purchase of Eufora stock (another bald-faced lie...and in addition to the approximately \$1.1 million+ overpayment??)

When does the Kaiser entitlement to anything and everything Kenner end (like Jowdy and Berard) – just because he went to work with FBI agent Galioto and Ken Jowdy's cabal??

Conclusion:

Thus, in February 2009 – when Tim Gaarn transfers Eufora Private stock proceeds to John Kaiser (\$30,000 & \$40,300) – the government proffer regarding “*funds still owed to Kaiser from the California renovation project*” is:

MISLEADING & FRAUDULENT

(Counts 2, 3 & 4)

It is clearly another *Napue* violation. See *Napue v. Illinois*, 360 U.S. 264, 269 (1959)